Department of Budget and Management
Office of the Secretary
Fiscal Year 2007 Operating Budget

Senate Budget & Taxation Committee – February 23, 2006
The Honorable Ulysses Currie, Chair

House Appropriations Committee – February 24, 2006
The Honorable Norman H. Conway, Chair

RESPONSE TO DLS RECOMMENDATIONS

Summary of DBM Positions

1. Delete the authorization for the Governor to withhold allotments from agencies		**Oppose**
2. **Delete Secretary's authority to redirect excess funds in statewide objects**		**Oppose**
3. Restrict payments for salaries of an Acting Secretary		Neutral
4. Apply across-the-board reductions in the Executive Branch to higher education		Neutral
5. Provide for an accounting of workers' compensation funds.		Neutral
6. Restrict payment for a Secretary's salary		Neutral
7. Require consistent reporting of federal monies received by the State.		Neutral
8. Require that capital funds be budgeted in separate eight-digit programs.		Neutral
9. Define the policies under which federal funds can be used in the State budget.		Neutral
10. Define the budget amendment process		**Oppose in part**
11. **Require a report on indirect costs**		**Oppose in part**

12. Require a general fund forecast		Neutral
13. Require consistent reporting of fiscal 2006, 2007, and 2008 budget data		Neutral
14. Require the maintenance of certain accounting systems		Neutral
15. Requires certain statewide subobjects		Neutral
16. Implement statewide process for resolving repeat audit findings	$500,000	**Oppose**
17. Prohibit spending for faith-based organizations		Neutral
18. Require report on interagency agreements		Neutral
19. Restrict payment for Department's vendor for actuarial services		**Oppose**

DEPARTMENT OF BUDGET & MANAGEMENT RESPONSES

***DLS Recommendation 1*:** Delete the authorization for the Governor to withhold allotments from agencies.

DBM Response: Oppose. This section provides the legal authority for a number of routine business and financial management processes, as well as a mechanism to address fiscal shortfalls. The allotment authority permits the Governor to exercise control over executive branch agencies and provides a means of controlling expenditures temporarily pending Board of Public Works or legislative action. Many other states (37) and municipalities grant this authority to their executive and to assure fiscal discipline.

Elimination of the authority to withhold allotments divests the Governor of one of the tools critical to addressing difficult fiscal problems. It permits a more deliberate process if budget reductions are ultimately required by allowing the Governor to delay spending while considering a solution to unexpected fiscal problems. This is a management tool that should be available to any Executive, especially the Executive responsible for the spending of taxpayer funds.

***DLS Recommendation 2*:** Delete Secretary's ability to redirect excess funds for statewide objects.

DBM Response: Oppose. For a number of years, funds budgeted for employees' health, retirees' health and Workers' Compensation insurance have been restricted. Until late in the previous administration, the Budget Secretary was authorized to grant exceptions and allow surplus funds to be redirected. This authority has been used in agencies to avoid deficiency appropriations in years where expenditures in one area may exceed the appropriation, but health insurance is less than the appropriation. DBM requests that this tool be restored for limited and appropriate usage.

There are accounting policies and controls in place that enable agencies to avoid the use of employee and retiree health insurance funding for any other purpose. These policies and procedures also allow the costs to be tracked. Developing and implementing additional policies and controls would be cumbersome (particularly specifying identification by fund source) and not provide any added value.

DLS Recommendation 3: Restrict the payment of an Acting Secretary's salary when nomination as Secretary has been rejected by the Senate.

DBM Response: Neutral.

DLS Recommendation 4: Apply across-the-board reductions in the Executive Branch to institutions of higher education, unless otherwise restricted.

DBM Response: Neutral.

DLS Recommendation 5: Provide for an accounting of workers' compensation funds.

DBM Response: Neutral.

DLS Recommendation 6: Restrict payment for a Secretary's salary due to noncompliance with State laws, rules, and regulations.

DBM Response: Neutral.

***DLS Recommendation 7*:** Require consistent reporting of federal monies received by the State.

DBM Response: Neutral.

DLS Recommendation 8: Require that capital funds be budgeted in separate eight-digit programs.

DBM Response: Neutral

DLS Recommendation 9: Define the policies under which federal funds shall be used in the State budget.

DBM Response: Neutral.

DLS Recommendation 10: Define the budget amendments process.

DBM Response: Oppose. The Department opposes the revisions to this section that restrict special, higher education and federal fund budget amendments (1) if the availability of the funds was known to the administering agency on or before March 15, 2006 or (2) if the amendment would increase the appropriation by more than 2.5%. The Department agrees with the concept that, to the extent possible, all funds should be appropriated in the budget submitted by the Governor. However, the Department is concerned about unintended and unanticipated consequences especially since this recommendation substantially alters long standing practices without prior notice to the affected agencies.

The recommended process may have significant adverse effects on the delivery of State services because it is impossible to predict with absolute certainty all of the special, federal or higher education funds that may be received or may be available. Further, the concept of what is known and by whom introduces a level of fact finding that will waste State resources. The assumption that deficiency appropriations will provide an alternative mechanism to meet the needs of Maryland's citizens ignores the fact that often needs arise without notice and must be addressed on a more timely basis.

The Department also opposes the restrictions on reimbursable fund transfers from the Maryland Emergency Management Agency. In most instances, these amendments represent homeland security funding to address public safety infrastructure and operational needs. DBM requests that the inclusion of reimbursable fund transfers from the Maryland Emergency Management Agency be withdrawn from the budget amendment review criteria.

DLS Recommendation 11: Require a report on indirect costs and restrict use of indirect cost recoveries.

DBM Response: Oppose the requirement that all statewide federal indirect cost recoveries be reverted solely to the general fund without the possibility of a waiver to permit any agency to retain those funds for any other use or purpose.

Although DBM agrees that fewer waivers should be granted, there may be instances where a waiver is appropriate. Eliminating waivers would result in greater general fund expenditures or reduced program activity. In some instances, agencies have requested waivers so that indirect cost funding can support the grant program for which funds have been provided.

DLS Recommendation 12: Require general fund forecast in the Executive Budget Books.

DBM Response: Neutral.

DLS Recommendation 13: Require consistent reporting of fiscal 2006, 2007, and 2008 budget data and other requirements.

DBM Response: Neutral.

DLS Recommendation 14: Require the maintenance of accounting systems for certain programs and other requirements.

DBM Response: Neutral.

DLS Recommendation 15: Require the maintenance of certain statewide subobjects.

DBM Response: Neutral.

DLS Recommendation 16: Require the Governor and the Chief Judge to implement statewide process for resolving repeat audit findings and withhold $500,000 from the Department of Budget and Management and $500,000 from the Judiciary Budgets.

DBM Response: Oppose. In December 2005, the Department responded to a virtually identical recommendation in the FY 2006 analysis. In that response, the Department indicated the barriers to such a system. Most notably, this requirement would require a parallel system to the Office of Legislative Audits and would require additional positions within the Department of Budget and Management and the allocation of significant financial resources that have not been included in the FY 2007 budget. A copy of the Department's response is attached. The Department believes that any recommendation about the Judiciary should be discussed with the Chief Judge who also provided a separate response to the FY 06 recommendation.

DLS Recommendation 17: Prohibits spending for faith-based organizations.

DBM Response: Neutral.

DLS Recommendation 18: Require report of interagency agreements.

DBM Response: Neutral

DLS Recommendation 19: Require the Department to select another contractor for actuarial services.

DBM Response: Oppose. The Department secured the services of the contractor through a competitive procurement during the last Administration. While the DLS refers to inaccurate costs estimates for the health plan, estimating health costs is inherently imprecise due to the number of variables in making such estimates. The estimates for FY 07 were made with less than 3 months experience for the plan design changes that were implemented in July 2005. It was far from certain and still is that we will achieve the kinds of savings for an entire year that we have achieved for the first 6 months.

Additionally, the precedent that adoption of this recommendation will set is very troubling. Will the General Assembly now adopt budget language to direct termination of contractors with whom they disagree?

ISSUES

I. State Comprehensive Plan for Managing for Results

The first statutorily required State Plan was published in 2005. This Plan determined which measures were key indicators of success for the five Pillars. The data reported in the first Performance Report published in 2006 establishes a baseline and describes the first results for the 2005 Comprehensive Plan. Progress will be measured against this baseline for future years. DBM has provided citations for sources of data if the reader is interested in looking at historical data.

DBM will review and update the 2005 State Plan as necessary and required by statute. This review will take into consideration issues raised by the DLS analysis.

MARYLAND
DEPARTMENT OF
BUDGET & MANAGEMENT

ROBERT L. EHRLICH, JR.
Governor

MICHAEL S. STEELE
Lieutenant Governor

CECILIA JANUSZKIEWICZ
Secretary

JOHN M.WASILISIN
Deputy Secretary

December 8, 2005

The Honorable Ulysses Currie
Chair, Senate Budget and Taxation Committee
3 West, Miller Senate Building
Annapolis, MD 21401

The Honorable Norman H. Conway
Chair, House Appropriations Committee
131 Lowe House Office Building
Annapolis, MD 21401

Dear Chairmen Currie and Conway:

Thank you for your letter of November 30, 2005 reminding me of the requirements of Section 42 of the 2006 Budget Bill. I regret that I have not yet provided this information to you.

As I noted at the November hearing of the Joint Audit Committee on the audit of the Department's Office of Personnel Services and Benefits, we value the regular reviews by the Office of Legislative Audits (OLA). We believe these independent reviews enhance State operations by identifying vulnerabilities that may not be apparent to State employees who are focused on the day-to-day delivery of services to the citizens of Maryland.

From the outset of his Administration, Governor Ehrlich has conveyed a message to State employees that the integrity of State operations is a critical goal of his Administration and that misconduct must be reported. To reinforce this message, the Governor issued Executive Order 01.01.2003.01 on January 17, 2003, just after his inauguration, to assure the integrity of State operations and Executive Order 01.01.2003.13 in April 2003 to implement procedures to address public corruption and misconduct. Thus, on a regular basis and independent of auditors, we have encouraged our employees to adhere to the highest standards and to report misconduct immediately rather than wait until the auditors arrive. We are proud that we have a workforce of more than 78,000 dedicated State employees and that significant failures and criminal misconduct are relatively rare.

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Repeat audit findings may be indicative of the necessity of all State employees to establish priorities in accomplishing all of their duties. Audit findings that pose immediate financial risk to the State are addressed immediately and the remainder are addressed in a priority fashion. Moreover, there are audit findings on which the OLA and the agencies do not agree and thus will remain unresolved because of this disagreement. Sometimes, a repeat audit finding is due to the fact that the auditors do not agree with the particular method that the agency has selected to resolve the problem.

Section 42 seems to shift some of the responsibilities of the OLA to the Department of Budget and Management by requiring the Department to institute procedures for resolution of audit issues and to impose new reporting requirements. We have a number of concerns about this shift.

First and foremost is the ability of the Department to confirm resolution of audit findings for all Executive Branch agencies. The Department does not have the capacity to review all of the audit findings that are issued by the OLA and to confirm that each State agency has resolved every issue. Moreover, only the OLA can decide whether it believes the findings are resolved, especially because State agencies and the OLA do not always agree.

Second, the Department does not have authority over many of the agencies in the Executive Branch. As you know, many agencies are independent and may not be subject to full oversight by the Department. A few examples of such agencies are the University System, the Stadium Authority, the Board of Public Works, the Comptroller, and the Treasurer.

Third, the Department's Office of Budget Analysis has a total of 26 employees. In contrast, in September 2005, 15 employees of the OLA were assigned to audits of various units of the Department. In order to establish a meaningful procedure under Section 42, we would need to create an entirely new unit and allocate substantial resources to implement the functions that you seek.

Nevertheless, the Department has implemented effective procedures to assure more attention to audit findings because we believe that agencies should be accountable for the proper administration of the funds and responsibilities allocated to them. As part of our review of State agency budgets for FY 2007, we have asked our analysts to review the audit findings for each agency and to solicit from the agencies their assessment of progress on resolution of audit findings. This assures that agencies understand the importance of resolving repeat audit findings and that failure to do so may affect the resources allocated to the agencies.

In October 2005, we also asked agencies to provide us with the discussion notes issued by legislative auditors to provide additional attention to the importance of audits and the immediate resolution of the most serious issues. The OLA has expressed some concern about this approach. A copy of Mr. Myers November 21 letter to me regarding our process is enclosed.

Finally, we do not believe that creating Inspector General positions in each cabinet-level agency is the best use of taxpayer dollars. As you know, the largest Departments (Public Safety, Human Resources, Health and Mental Hygiene, Juvenile Justice) already have such positions. Moreover, every State employee is responsible for compliance with applicable laws, rules and regulations.

On a more limited scale, in December 2003, the Department instituted a procedure by which our units were to report progress to resolution of audit findings on a quarterly basis to the Department's Compliance Auditor and to the Deputy Secretary. Regrettably, even this system was insufficient to eliminate all repeat findings for the Department.

I believe that this report satisfies the requirements of Section 42. If you require further information, please contact me.

Sincerely,

Cecilia Januszkiewicz

cc: Senator Patrick J. Hogan, w/enclosure
Senator James E. DeGrange, Sr., w/enclosure
Delegate Talmadge Branch, w/enclosure
Delegate Joan Cadden, w/enclosure
Mr. James C. DiPaula, Jr., Chief of Staff, Office of the Governor, w/enclosure
Mr. Jervis S. Finney, Chief Counsel, Office of the Governor, w/enclosure
Mr. John M. Wasilisin, Deputy Secretary
Mr. Karl S. Aro, Director of Legislative Services
Mr. Warren G. Deschenaux, Director of Office of Policy Analysis
Mr. Bruce A. Myers, Legislative Auditor
Mr. Thomas J. Barnickel III
Mr. David A. Treasure, Executive Director, Office of Budget Analysis
Ms. Joan Peacock, Compliance Auditor, Department of Budget and Management
Ms. Anne Hubbard, Legislative Liaison, Department of Budget and Management

DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Karl S. Aro
Executive Director

Bruce A. Myers, CPA
Legislative Auditor

November 21, 2005

The Honorable Cecilia Januszkiewicz, Secretary
Department of Budget and Management
45 Calvert Street
Annapolis, Maryland 21401

Dear Secretary Januszkiewicz:

I am writing to you concerning Mr. Treasure's October 27, 2005 memorandum to State Agency Chief Financial Officers (CFO) pertaining to discussion notes issued by the Office of Legislative Audits (OLA). Mr. Treasure requested CFOs to provide copies of OLA's discussion notes to various individuals within the Department of Budget and Management to improve the information provided to the Governor's Office on significant pending audit issues.

We appreciate the interest of the Governor's Office in the audit issues. This heightened attention may help ensure that agencies address the issues, especially those findings that have not been corrected from previous audits. While we support these efforts, we do have certain concerns about maintaining the confidentiality of the discussion note findings and relying on those findings.

OLA's law specifies that information obtained during an audit is considered confidential and, except under certain specified conditions, cannot be disclosed. We have always considered the discussion notes to be confidential. The notes frequently contain detailed information that should not be made public. These details enable the audited entity to fully understand the nature of the findings and the needed corrective action. Therefore, we take great care to secure the notes and limit their distribution only to select individuals designated by top management of the audited entity. We trust that the Department and Governor's Office would respect our considerable efforts to maintain their confidentiality.

It should also be noted that the discussion notes represent our preliminary, not final, results of an audit. OLA has an extensive quality control process that spans from the beginning of fieldwork through final audit report issuance. The discussion notes and the related exit conference with the agency provide a mechanism, in part, to verify that the facts are accurate and comprehensive as presented. Nevertheless, at the point the notes are issued, our quality control process has not been completed, including final review by OLA senior management. Furthermore, for various reasons, discussion note findings may be presented differently in the final audit report, which is public information, or may be excluded altogether. Therefore, placing too much reliance on the findings as presented in the discussion notes would be inappropriate.

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I trust that you understand our concerns and will help ensure that the confidentiality of the discussion notes will continue to be maintained. If you have any questions or concerns, please contact me.

Sincerely,

Bruce A. Myers

Bruce A. Myers
Legislative Auditor

cc: David A. Treasure, Executive Director, DBM Office of Budget Analysis
James C. DiPaula, Jr., Chief of Staff, Governor's Office
Karl S. Aro, Executive Director, Department of Legislative Services